

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Barrie Gilbert Serial No.: 09/545,691
Examiner: Philip Sobutka Filed: April 7, 2000
Group Art Unit: 2618
Title: RF MIXER WITH INDUCTIVE DEGENERATION
Date: October 12, 2009

PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Applicant respectfully requests that the Notice of Abandonment, mailed July 23, 2009, be withdrawn on the basis that allowed claims remain in the application and, therefore, the application should have been allowed rather than deemed abandoned following dismissal of the appeal. As explained in more detail below, Applicant filed a Petition For Revival shortly after receiving the Notice of Abandonment. In the Decision, mailed September 24, 2009, the Office dismissed the Petition For Revival, but incorrectly stated that no claims were allowed. Thus, it became apparent that the holding of abandonment was incorrect. Applicant therefore submits this Petition To Withdraw Holding Of Abandonment.

Background

A Notice of Non-Compliant Appeal Brief was mailed October 13, 2006 because the brief did not list the status of the canceled claims. According to 37 CFR 41.37(d), if an appellant does not file an amended brief within the set time period, the appeal will stand dismissed. “If the appeal is dismissed, but allowed claims remain in the application, . . . the application is **not abandoned**”. MPEP 1215.04, last paragraph (emphasis added). In an application having allowed claims, the dismissal of an appeal is to be treated as a withdrawal of the appeal and of any claim not standing allowed. The application “should be passed to issue forthwith.” MPEP 1215.04, first paragraph.

Because of an administrative error, Applicant (Appellant) did not file an amended brief in response to the Notice of Non-Compliant Appeal Brief. However, allowed claims 2, 3, 9, 10, 13 and 16-26 remained in the application. *See* Summary and page 2 of Final Office Action mailed June 4, 2004 (attached as Exhibit A). Therefore, because the appeal was dismissed by operation of 37 CFR 41.37(d), the application should have passed to issuance rather than be deemed abandoned.

Applicant's first response to the Notice of Abandonment

The Notice of Abandonment was mailed July 23, 2009. On August 5, 2009 Applicant filed a Petition For Revival Of An Application For Patent Abandoned Unintentionally on the assumption that the holding of abandonment was proper. A Decision On Petition dismissing the Petition For Revival was mailed September 24, 2009.

The Decision stated that the application was deemed abandoned because "no claim was allowed". *See* page 1 of Decision on Petition mailed September 24, 2009 (attached as Exhibit B). As explained above, however, some allowed claims remained in the application.

Now that the incorrect basis for the holding of abandonment has become apparent, Applicant respectfully requests that the holding of abandonment be withdrawn.

Timing of this petition

Although a petition to withdraw a holding of abandonment should be filed within two months from the mailing of the notice of abandonment, the Office may accept a later filed petition. "Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 CFR 1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment." MPEP 711.03(c)(I)(C).¹

¹ Because the filing date of this application is April 7, 2000, a terminal disclaimer is not required. "In utility and plant applications filed on or after June 8, 1995, but before May 29, 2000, a terminal disclaimer should **not** be required as a condition of granting an untimely petition to withdraw the holding of abandonment." MPEP 711.03(c)(I)(C)(2) (emphasis in original).

Acceptance of this Petition after the two month period is appropriate. After receiving the Notice of Abandonment, Applicant made a good faith effort to respond to the Notice by filing the Petition For Revival less than two weeks after receiving the Notice. The basis for the incorrect holding of abandonment (assumption of no allowed claims) did not become apparent until Applicant received the Decision On Petition which was mailed one day after the end of the two month period. The filing date of this Petition is less than three weeks after the end of the two month period.

Respectfully submitted,

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Office Action Summary

09/545,691

GILBERT, BARRIE

Examiner

Art Unit

Philip J. Sobutka

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,9,10,13 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,3,9,10,13 and 16-26 is/are allowed.
- 6) ☒ Claim(s) 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 21. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voinigescu et al (US 5,789,799) in view of Mitzlaff (US 5,307,512).

Consider claim 15. Voinigescu teaches an amplifier cell comprising first and second input terminals (Voinigescu, fig 9, RF & LO), first and second output terminals (Voinigescu, fig 9, IF), first input stage coupled to the first and second output terminals (Voinigescu, fig 9, Q1, Q2) and arranged to drive the first and second output terminals responsive to a first input signal received at the first input terminal; and a second input stage coupled to the first and second output terminals and arranged to drive the first and second output terminals responsive to a second input signals received at the second input terminal (Voinigescu, fig 9, Q3,Q6). Voinigescu lacks a teaching of the amplifier stages being class AB. Mitzlaff teaches that class AB operation has higher efficiency when constant envelope modulation schemes such as FM are employed (col 2, lines 62-65). It would have been obvious to one of ordinary skill in the art to modify Voinigescu to use AB stages for higher efficiency when in FM operation.

Allowable Subject Matter

2. Claims 2,3,9,10,13, and 16-26 are allowed.

Consider claim 2. The nearest prior art as shown in Voinigescu and Mitzlaff fails to teach an RF mixer comprising a mixer core having a LO input port, an IF output port and an input with an RF input section providing a current signal responsive to an RF input; wherein the RF input section includes: a transistor coupled to the input, and a



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OFFICE OF PETITIONS

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In re Application :
Barrie Gilbert :
Application No. 09/545,691 : DECISION ON PETITION
Filed: April 7, 2000 :
Attorney Docket No. 1482-132 :



SQ

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 5, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned as a result of petitioner's failure to file a complete and proper appeal brief within the time period provided in 37 CFR 41.37(a)(1). As a complete and proper appeal brief was not filed within the one (1) month of the Notification of Non-Compliance with 37 CFR 41.37(c)(1) mailed October 13, 2006, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on November 14, 2006. See MPEP 1215.04. A Notice of Abandonment was mailed on July 23, 2009.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR

Ex B
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